S.B.Civil Misc. Appeal No.407/1994
National Insurance Co. Lt. vs. Sukhi Devi & ors.

Date of Order: 18.10.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sanjeev Johri for the appellant.

Heard learned counsel for the appellant.

This appeal is against the order dated 31.3.1994 by which the learned Workmen Compensation Commissioner, Jodhpur, in Claim Case No.23/90 awarded compensation of Rs.78,824/- to the claimant. The learned Workmen Compensation Commissioner also imposed penalty of Rs. 39,412/- and interest @ 6% per annum from the date of the application, i.e. from 6.3.1990 to 31.3.1994 and upto the date of payment thereafter.

The appellant has challenged the liability of penalty and interest of the appellant.

Since in view of the law laid down by the Hon'ble Apex Court, the Insurance Company is not liable to pay the penalty amount, therefore, on this count the appeal succeeds.

So far as the interest liability is concerned, the Insurance Company could have contract out the liability of payment of interest but has not contract against the liability of the interest the Insurance Company cannot avoid the interest liability. The learned counsel for the

appellant submitted that though there is no condition by which the Insurance Company has contracted that the Insurance Company will not be liable to pay the interest but at the same time, the Insurance Company has not, by expressed terms of the contract, agreed to pay the interest amount to the claimant or the employer.

It is true that there is no specific mention that the Insurance Company shall be liable to pay the interest awarded by the learned Workmen Compensation Commissioner in case it is held that the insurer is liable to pay the compensation but the liability of interest is integral part of the damages awarded to the claimant and, therefore, unless it is contracted out by the Insurance Company specifically by mentioning the condition in the insurance policy of not undertaking his liability of interest, the Insurance Company cannot escape from the liability of payment of interest. It will be further relevant to mention here that no such defence was taken by the appellant Insurance Company before the learned Workmen Compensation Commissioner that the Insurance Company is not liable to pay the interest amount. Therefore, the objection against the levy of interest and its payment by the Insurance Company cannot be sustained.

In view of the above, the appeal is partly allowed and it is held that the Insurance Company shall be liable to pay the compensation amount as awarded by the learned Workmen Compensation

Commissioner along with interest amount only and the Insurance Company shall not be liable to pay the penalty amount of Rs.39,412/-.

(**PRAKASH TATIA),J.**

mlt.